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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/820,289
Filing Date: April 08, 2004
Appellant(s): ANDRES, ROBERT M.

David L. Wisz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/29/2008 appealing from the Office action

mailed 10/18/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,305,709   OKADA   10-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4, 5, and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims have been amended to include the limitation "independent of a crash event" in an attempt to define over the prior art of record. It is noted, however that this limitation was not reasonably or sufficiently described in the specification as originally filed. The examiner notes that paragraph [19] of the specification as originally filed includes the following language "The graph represents logic stored within the controller 14 for deployment of the air bag 18 in response to signal *from the satellite sensor 16 and the vehicle speed sensor 24*" *(Examiner's italics.)* Additionally, in paragraph [18] the specification sates that "…one way to desensitize the system 12 is by requiring a certain level of input from more than one sensor". In both instances, as best understood based on the cursory nature of the specification, these entail crash events.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by

Okada (US 6,305,709 B1.) Okada teaches a method of deployment discrimination for

an air bag that includes the steps of determining whether an air bag is traveling above a

predetermined speed and sensitizing the deployment algorithm decision threshold for a

side airbag in response to the air bag traveling above the predetermined speed (see

Figure 3 and 4) and desensitizing the decision threshold if the if the speed is below a

predetermined speed (V1) for a predetermined time (t2) See col. 7, lines 35-55, for

further explanation. The air bag is a side air bag. Regarding claim 15, the desensitizing

is independent of a crash event, since the lowest threshold corresponds to a rough road

condition (see col. 8, lines 10-16), which is not a crash event.

Claim Rejections - 35 USC § 103

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okada (US

6,305,709 B1) in view of Drummond (US 6,591,932.) Okada is discussed above, and

does not teach multiple satellite sensors. Drummond teaches that it is known to use

multiple satellite sensors for side impact detection, and that such use provides earlier

detection than a single sensor (see col. 1, lines 30-35.) In view of the teaching of

Drummond, t would have been obvious to one having ordinary skill in the art at the time

of the invention to include satellite sensors with the detection system of Okada in order

to provide for early detection of side impact.

Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Okada (US 6,305,709 B1.) Okada is discussed above, and does not specifically

disclose the value of V1, and as such does not teach 7 mph (or 2, if that is what the

applicant intends based on the specification.) However, it would have been obvious to

one having ordinary skill in the art at the time of the invention to set V1 to such a

relatively low velocity, since V1 is the velocity below which the airbag is intended to not

deploy, and 7 mph or 2 mph is slow enough to not require an airbag. Additionally it has

been held that where the general conditions of a claim are disclosed in the prior art,

discovering the optimum or workable ranges involves only routine skill in the art. *In re*

Aller, 105 USPQ 233.

(10) Response to Argument

Response to arguments related to the 112 1st paragraph rejection of claims 4, 5, and 15:

During the course of prosecution of this case, the Applicant amended these claims to

include the limitation that the threshold is adjusted "independent of a crash event" in an

attempt to overcome the prior art of record. There is no where in the specification as

originally filed that includes support that the invention included this limitation. The

Applicant draws the Board's attention to Figure 2 and states that this graph illustrates

that the "deployment algorithm threshold increases and then later decreases". This

statement is untrue. Figure 2 is not a graph of the deployment algorithm decision

threshold. It is only a graph of the velocity of a vehicle with respect to time and is used

to show what is considered to be the difference between a stationary vehicle and a

moving vehicle. As described in the specification in paragraph [0019] "Figure 2 is a

graphical representation of the logic for determining if the vehicle is stationary or moving using vehicle speed information." Figure 2 is simply not a graph of threshold, and if it were it wouldn't make sense, because if there were one-to-one correspondence between the threshold and the vehicle speed, then the threshold would increase with velocity, which would mean that the faster the vehicle went, the less sensitive the threshold would be, which is counter to the invention described and claimed in claim 1, steps 2 and 4. As such it is entirely unclear why the Applicant is using Figure 2 as evidence that the specification has support for the limitation "independent of a crash event". For the threshold adjustment to be independent of a crash event, the adjustment in threshold would need to occur continuously, regardless of input from any other sensors that measure vehicle parameters or events. The specification is so cursory in discussion, and this limitation is simply not found. In fact support for the opposite seems to be implied. As described, paragraph [19] of the specification as originally filed includes the following language "Figure 2 is a graphical representation of the logic for determining if the vehicle is stationary or moving using vehicle speed information. The graph represents logic stored within the controller 14 for deployment of the air bag 18 in response to signal *from the satellite sensor 16 and the vehicle speed sensor 24" (Examiner's italics.)* As described, logic is stored in the controller. That logic is specifically "if the vehicle is stationary or moving". There is no support in the specification that indicates that the logic stored is a threshold value that was appropriately sensitized or desensitized, prior to any signal from the satellite sensor. This additionally can not be inherently disclosed from the language of this paragraph. It

is just as likely that the threshold value is generated after the input from the satellite sensor.

Response to arguments related to the 102(b) rejection of claims 1, 10, and 15 as being anticipated by Okada (6305709.)

As a first note, the Applicant's statement upon which the arguments regarding the 102(b) rejection are based, that "Okada is therefore a control of how the airbag deploys- not whether the airbag deploys as recited and claimed by Appellant" is not true. As seen in Figure 6, various thresholds are sensitized or desensitized (col. 7, lines 35-55, and throughout) based on predetermined velocities and predetermined times) and whether or not an airbag is deployed is decided (see ST15 or ST12, Figure 6) based on the value of the acceleration when to compared to a threshold whose value changes (i.e. sensitized or desensitized.) How an airbag is deployed is not controlled, it is whether an airbag is deployed. As such, the airbag of Okada is not deployed if there is only a rough road situation, see col. 7, lines 19-26, which at least to the extent disclosed by the Applicant, meets the limitations imposed by Claim 15.

Response to arguments related to the 103(a) rejection of claims 11-14 as being unpatentable over Okada (6305709.)

It is the Examiner's position that this argument is not well founded. Okada specifically describes a predetermined velocity and a predetermined time, but doesn't give specific values for the predetermined velocity. A person having ordinary skill would understand that since Okada is directed to an invention that avoids airbag inflation when it isn't necessary, for instance when the vehicle is traveling over a rough road, finding the

appropriate velocity would not require undo experimentation. Additionally, head-impact

criteria (HIC) which govern airbag design are well understood to be a function of vehicle

momentum, i.e. velocity and so the optimal or workable range of appropriate velocities

would readily be determinable, given that general conditions are disclosed by Okada.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ruth Ilan/

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